

# THE MARTHA'S VINEYARD COMMISSION

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## Minutes of the Special Meeting of September 4, 2003

Held in the Olde Stone Building,  
33 New York Avenue, Oak Bluffs, MA

### IN ATTENDANCE

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**Commissioners:** James A. Athearn, Chairman (Elected – Edgartown), John Best (Elected – Tisbury), Christina Brown (Elected – Edgartown), Linda DeWitt (Appointed – Edgartown), Jane A. Greene (Appointed – Chilmark), Tristan Israel (Appointed – Tisbury), Katherine Newman (Appointed – Aquinnah), Megan Ottens-Sargent (Elected – Aquinnah), Bob Schwartz (Appointed – West Tisbury), Alan Schweikert, (Appointed – Oak Bluffs), Doug Sederholm (Elected – Chilmark); Linda Sibley, (Elected – West Tisbury), Paul Strauss (Appointed – County), Richard Toole (Elected – Oak Bluffs), Andrew Woodruff (Elected – West Tisbury)

**Staff:** Mark London (Executive Director), Jennifer Rand (DRI Coordinator), David Wessling (Transportation Planner), Bill Wilcox (Water Resources Planner), Christine Flynn, (Affordable Housing; Economic Development), Bill Veno, (Comprehensive Planner; Trails & Byways),

### 1. CK ASSOCIATES (DRI No 555) – CONTINUED PUBLIC HEARING

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*Commissioners present: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, K. Newman, M. Ottens-Sargent, R. Schwartz, A. Schweikert, D. Sederholm, L. Sibley, P. Strauss, R. Toole, A. Woodruff.*

There being a quorum present, Christina Brown, Hearing Officer, at 7:40 reopened the Public Hearing previously recessed on August 14, 2003, and read the Hearing Notice.

**Christina Brown** said that at the last hearing, the Applicant made allegations of prejudgment, bias and conflict of interest on the part of various commissioners. The Commission takes these allegations seriously and the Commission's counsel is looking into them. They will be dealt with in a proper forum but will not be discussed tonight.

**Christina Brown** said that, at the last hearing, the commissioners had asked the Applicant for information on various elements of the proposal. Subsequently, staff sent a letter to the Applicant reiterating the main elements that should be submitted to allow the Commission to evaluate the benefits and detriments. She read a copy of the letter *[a copy of which is in the meeting file]*. She asked the Applicant which of these additional information requests he has or intends to provide, and asked whether he has other information he wished to provide.

### **1.1 Applicant's Presentation**

**Brian Lafferty**, agent for the Applicant, said that the morning of this meeting, he had filed an ethics complaint against Mr. Toole, whom he believes to be breaking the law, and one against Mr. Best. He had also filed a complaint with the Bar Association about Commission Counsel Mr. Rappaport, and a complaint with the Ethics Commission against Mr. Rappaport.

**Brian Lafferty** said that he had received a letter from DRI Coordinator Jennifer Rand asking for information. He had asked Ms. Rand if that is all that was needed; she had said yes, unless he wanted to provide additional material. He handed the Hearing Officer an envelope with additional information and said that he assumed that by providing this information, this is all that is required and the hearing can be closed. Christina Brown said commissioners might ask for more information.

**Brian Lafferty** summarized the information he submitted.

- He has provided a conceptual landscaping and lighting plan.
- As to the natural resources, the proposal meets all state requirements, Title 5, and state environmental codes. There is 57 acres of open space proposed, or over 20% of the total acreage. That is twice the 10% open space in Oak Bluffs, according to Commission data.
- Re wastewater, it will meet all state requirements.
- Re drainage, the proposal complies with DEP stormwater policies and Best Management Practices, and with the Oak Bluffs Rules and Regulations for Subdivision in all respects and they are asking for no variance. The roads are proposed to be owned and maintained by the Town of Oak Bluffs.
- The open space is proposed to be available to all residents of the subdivision, for recreational uses as allowed by the Oak Bluffs Zoning By-Laws.
- Regarding the request to provide sample covenants that address landscaping and lighting, and sample rental leases, he feels that those are both beyond the scope of the Commission's jurisdiction. Individual property owners will landscape the properties as they wish; covenants will not address landscaping. The lease terms are to be controlled by the funding agency and the monitoring agency; they will be consistent with the requirements of Chapter 40B. He added that the basic deed restrictions and monitoring agreements were included in the original plan on file with the Oak Bluffs ZBA.
- There is a revised fiscal pro-forma indicating that the negative fiscal impact on the town will be \$1.5 million a year instead of \$1.8M as in the previous study. The cost of the market-rate houses was estimated at \$750,000, instead of the \$500,000 estimate used in the earlier study.
- Regarding the request for a financial pro-forma that explains why it is necessary to have 320 units in order to make the proposal economically viable, they have no intention of justifying the choice, nor do they contend that it would take 320 units to make the development profitable. According to DHCD's April 2003 inventory, Martha's Vineyard needs an additional 455 units of affordable housing to meet the bare statutory requirements, so it makes no difference how many units are required for profitability.
- He added, regarding profitability, that the regulation 763 CMR 1.07 states, in paragraph four, that no one is entitled to that information, other than the funding agency.
- Regarding phasing, there is a proposed schedule in the application. The overall proposal is for 8 years, depending on market conditions and funding sources. Phasing would be up to the developer, within the limits of any restrictions placed by the funding agency.

- The traffic consultant responded separately in writing to the questions about trip generation and distribution *[see meeting file]*.
- Any attempt by the Commission to unreasonably prolong the permitting process will result in immediate appeal.

**Christina Brown** said that since commissioners had not seen the responses before the meeting, and only one copy was provided, it would be difficult for Commissioners to ask questions.

**Jennifer Rand** corrected what Mr. Lafferty had said about what information she had indicated was required. She read from the e-mail she had sent him, "If there is anything that was requested in the past that has not been provided and is still relevant, of course we would want that. Also, if there is anything we did not ask for that you think would be important, it would be helpful if you provided that."

**Megan Ottens-Sargent** recalled from the first part of the hearing discussion of the advisability of diverting runoff into grassy swales vs. sand. **Brian Lafferty** said that the design has not yet been done but it will meet DEP stormwater policies and Best Management Practices. He added, "If it is good enough for DEP, it's going to have to be good enough for you."

**Jane A. Greene** said she thought the Applicant had agreed at the previous hearing to provide association covenants. She was concerned, for example, that without restrictions, individual owners would be able to use any kind of chemical products on their lawns and that would have a negative impact on the groundwater and the ponds. **Brian Lafferty** said that the covenants had not been prepared yet but there would not be any deed restriction with respect to landscaping products. **Jane A. Greene** added that the restrictions are normally required for any subdivision reviewed by the Commission.

**Paul Strauss** asked how run-off facilities would affect and protect open space. **Brian Lafferty** said the open space land could be used for any recreational purposes the residents want. If they wanted to build a baseball field, they could build a baseball field.

**Paul Strauss** asked about septic restrictions, whether the 10,000 square foot or the 15,000 square foot per bedroom limit applies. **Brian Lafferty** said that neither one applies. Most of the property is not within a nitrogen-sensitive area. Only about 40 acres is in the zone of contribution of the Farm Neck well.

**Paul Strauss** asked if the project would need a discharge permit. **Brian Lafferty** said that Bill Wilcox had said no at the previous Public Hearing. As long as the lots are individually owned, they would not be subject to aggregation requirements. This is why they eliminated the previously proposed condominiums.

### 1.2 Public Testimony in Favor of the Project

There was none.

### 1.3 Public Testimony Opposed to the Project

There was none.

**Christina Brown** summarized newly received correspondence.

- **Elizabeth Campbell** wrote in opposition to the proposal, expressed concern about the lack of meaningful open space, and concerned about who would monitor the drainage.

- **Randall Spurr**, Barnes Road, wrote in opposition, since it would add traffic to a busy road.
- She read aloud the August 27 letter from **Philippe Jordi**, executive director of the Dukes County Regional Housing Authority. In the letter, the RHA recommended a reduced density and rate of development, acceptable to the Town of Oak Bluffs and to the Commission; recommended increasing the percentage of housing for those making 80% or less of median income from 25% to 50% of the project, that the maximum resale value be restricted in perpetuity, and that the applicant enter into a monitoring agreement with RHA for compliance; recommended that 100% of the houses be sold at a range of affordability of up to 140% of median income, with preference to Island residents; recommended deed restrictions used by other 40B projects, as attached to the letter, expressing concern with the proposed formula; recommended evenly dividing the SRU's between 1, 2 and 3-bedroom apartments; expressed opposition to clustering the rental units; recommended that the Commission help plan for affordable housing, including 40B developments.

**Brian Lafferty** responded to the RHA letter, saying that the SRU's were added at the specific request of the Secretary of DHCD to address the affordable housing needs of the Vineyard, and that the proposed deed restrictions are the specific ones required by DHCD and MHFA. Referring to Mr. Jordi, he said "For the last Down Island proposal, that sleaze ball said that if he received \$20,000 a year, he would write in support. That housing authority doesn't have a snowball's chance in hell of having any involvement in this project. He's an extortionist."

#### 1.4 Commissioners' Questions

**Christina Brown** said that after the Commissioners asked their questions she would consider closing the Hearing but leaving the written record open for two weeks. **Jane A. Greene** was concerned since there would be no opportunity for Commissioners or the public to ask questions after analyzing newly submitted documents. **Brian Lafferty** said that he would not provide any further answers.

**Megan Ottens-Sargent** said that at the last hearing, Bill Wilcox had talked about current loading in Lagoon Pond and concern over excessive loading that should not exceed 4.4 kilograms per acre per year (kg/ac/y), since the pond is already showing signs of overloading. **Bill Wilcox** replied that the proposed project would bring the nitrogen loading up to more than 4.4 kg/ac/y, since that is the pond's level now with nothing on the Applicant's site. There would be added nitrogen, so maybe the low dissolved oxygen found this summer would impact a larger area or would impact the southern end for longer periods of time. The 4.4 kg/ac/y limit does not readily apply to Lagoon Pond because the elongated shape means that the pond's water does not circulate efficiently. Arithmetically, the additional nitrogen spread over the whole pond would not be that great, but since it is concentrated at the southern end where the water circulation problems are the most serious, it would have a greater negative effect. **Brian Lafferty** said that it is unfair to make an assumption of how much of the nitrogen will end up in Lagoon Pond. It is fuzzy science, some will go to Sengekontacket and some northeast to the Sound. However, the overall impact would not put it to the upper limits (of "Good" water quality – 13.3 kg/ac/y). Nutrient loading in Lagoon Pond is a situation that has been in place for 60-70 years and is a problem no matter what happens to this site. He suggested that it was improper

to apply different standards to new projects and that a way should be found to deal with the existing developed properties.

**Jane A. Greene** asked, regarding the lighting plan, why there is a reference to sewer lines. **Brian Lafferty** said that this refers to the pipes to the septage systems. Some would be on the front of houses, others in back.

**Jane A. Greene** said that there is no indication of lighting on the lighting plan. **Brian Lafferty** noted that lighting is shown for the SRU's; that for the individual houses, it is up to individual property owners. For the roads, they would follow Oak Bluffs' Rules and Regulations for Subdivisions.

**Katherine Newman** asked whether they considered hooking into the Oak Bluffs sewer system. **Brian Lafferty** said that the distance is too great; that the Town doesn't have the capacity; and they don't see the need to burden the Town when it can be done on-site.

**Megan Ottens-Sargent** asked whether this is the original or a new application. **Brian Lafferty** said that it is the same application because, under 40B, the developer can make modifications that aren't substantial in nature, and a reduction in the number of units isn't considered substantial.

**Megan Ottens-Sargent** asked whether there is a need for a state conservation permit and if MEPA will review the proposal. **Brian Lafferty** said that no part of the property is subject to the wetlands regulations. He has never heard of a state conservation permit.

**Brian Lafferty** stated opposition to leaving the written record open. **Mark London** noted that, according to MVC regulations, new information is supposed to be submitted at least 72 hours in advance, in order to allow commissioners to review it and be in position to ask questions or make comments during the Hearing; this was not done in this case. **Brian Lafferty** replied that he had not really submitted any new material, merely clarifications of material previously submitted. Regarding his concern, **Linda Sibley** pointed out that this does not affect the timetable, as the 60-day deadline starts as of the closing of the hearing, regardless of whether or not the written record remains open.

**Christina Brown** closed the Public Hearing at 8:32 p.m. and left the written record open for two weeks.

*There was a recess from 8:32 to 8:43 p.m.*

## **2. WOODSIDE VILLAGE VI (DRI No. 568) – DELIBERATION AND DECISION**

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*Commissioners present for this item: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, M. Ottens-Sargent, A. Schweikert, L. Sibley, P. Strauss, R. Toole*

**Christina Brown** reported that LUPC recommended approval with a proposed set of conditions that she read aloud.

**Jane A. Greene** said that the Executive Director should not be the one to approve the landscape plan, as the conditions propose; it should be a commissioner decision. **Linda Sibley** said that it shouldn't be on one person's head, it should be a Commission decision. **Tristan Israel** said that we don't want to spend too much time looking at landscaping details; basic issues are whether they are native plants and whether screening is adequate, issues which don't need a lot of expertise. **Jane A. Greene** said that local expertise is needed about what is local for each area. **Christina Brown** said that LUPC will recommend creation of an LUPC Landscape Review

Subcommittee; their mandate would be to look at compliance of projects. It was determined to amend the proposed condition to submit the landscaping plan to the LUPC Landscaping Review Subcommittee.

**Megan Ottens-Sargent** asked whether there had been discussion at LUPC about the setback from the Special Way and whether the planning board had commented on the project.

**Christina Brown** said that it had been discussed at length, which is why the buffer and split rail fence had been proposed. **Jennifer Rand** said she had not heard more from the Planning Board.

*Linda Sibley moved and it was duly seconded that the project be approved with conditions. (Note: Final text of conditions follows below.)*

*Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, M. Ottens-Sargent, A. Schweikert, L. Sibley, P. Strauss, R. Toole. There were no votes in opposition or abstentions.*

*[The following three motions took place after Item 3 of the agenda.]*

*John Best moved and it was duly seconded to reconsider the decision of Woodside VI. Voice vote. In favor: 10. Opposed: 1. Abstentions: 0. The motion carried.*

*John Best moved and it was duly seconded that the condition dealing with pesticides and fertilizers be modified to add the words "synthetic" and "in maintaining the landscape". Voice vote. In favor: 10. Opposed: 0. Abstentions: 1.*

*John Best moved and it was duly seconded to approve project as conditioned. Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, M. Ottens-Sargent, A. Schweikert, L. Sibley, P. Strauss, R. Toole. There were no votes in opposition or abstentions.*

*The following text represents the conditions ultimately voted:*

- The approval is subject to the Applicant receiving a waiver from the Oak Bluffs Planning Board with respect to the minimum setback from the special way.
- The special way shall be protected during construction by erecting a temporary barricade located at least 5' from the trail's edge or the top of the bank, whichever is further from the centerline of the trail. The barricade shall be of a material preventing erosion and incidental vehicular access to the trail.
- There shall be no vehicular access to the site during or after construction from Old Holmes Hole Road, other than emergency access.
- The following landscape conditions shall be incorporated in the landscape plan:
  - The natural buffer of pine and oak trees and other vegetation between the building and the special way shall be preserved to the greatest extent possible and disturbed areas are to be replanted with dense shrubs and trees in order to re-establish the buffer of the same species that are there now (or of another similar native species that would result in a denser buffer, if so required by the Planning Board).

- No fence may be erected between the building and the special way other than a split-rail fence set back at least 10' from the trail's edge or the top of the bank, whichever is further from the centerline of the trail.
- The landscaping on the rest of the property shall include low-maintenance varieties. Turf area will be kept to a minimum. No synthetic herbicides, pesticides, fungicides or quick-release chemical fertilizers shall be used in maintaining the landscaping.
- The applicant shall provide a paved walking path from the project to the sidewalk along the main access road.

A landscaping plan for the site, incorporating these conditions, shall be submitted for the approval of the LUPC Landscape Review Subcommittee before construction.

- The resident population shall be maintained at a level that will yield a sewage flow that produces a nitrogen concentration within the groundwater that meets the Southern Woodlands DCPC requirement of less than 3.0 milligrams per liter.
- In order to adequately accommodate the Island's elderly population:
  - All common rooms shall be air-conditioned, to compensate for the limited cross ventilation, and all living units shall be designed to accommodate air-conditioning units.
  - The bathroom and kitchen in the handicap unit are to be equipped with infrared heat-sensitive faucets.
  - The front building entry doors and the exterior door to the handicap unit shall be remote button-activated.

### **3. AIDYLBERG II (DRI No. 569) – DELIBERATION AND DECISION**

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*Commissioners present for this item: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, M. Ottens-Sargent, A. Schweikert, L. Sibley, P. Strauss, R. Toole*

**Christina Brown** reminded the Commission that the Oak Bluffs Planning Board had approved Aidylberg I that did not have to be referred to the commission, and this proposal is for a second, identical 5-unit building.

LUPC reviewed the proposal and recommended approval subject to conditions that she read aloud.

It was agreed that the conditions should say that the fence height is "no greater than 4'" and the fence is "set back a minimum of 3-4' from property line".

There was a discussion about pesticide concerns; and the need to develop a standard that would be used on an ongoing basis.

- **Jim Athearn** asked whether pesticides referred to the whole property and wondered about their use for controlling rats. It was determined to add the words "in maintaining the landscaping", in order to distinguish landscaping pesticides from household pesticides.
- **Tristan Israel** asked whether non-organic pesticides might not have to be used on occasion. **Linda Sibley** suggested that the condition could prohibit chemical pesticides.
- **Christina Brown** said that this was a matter of principle with respect to a general concern about the impact on the environment, regardless of the size of the project.

- **Linda Sibley** asked whether the Commission could keep an updated list.
- **Bill Wilcox** said that there are two organizations that prepare lists, the National Organic Farmers Association and the OMRI. He suggested prohibiting synthetic pesticides.
- **Katherine Newman** asked whether the new LUPC Landscape Review Subcommittee could look at wording.
- **Tristan Israel** said that, for a golf course, where they have to maintain a certain quality of grass over a large area, the issue would merit greater discussion. For a small project such as this, suggestions to the Applicant of what pesticides to use should suffice. Then the Commission should develop standards.
- There was some discussion of recommending use of organic landscaping materials only. After establishing criteria, the Commission could then apply a consistent policy.
- **Linda Sibley** said there is no problem of prohibiting synthetic now and letting the definition be refined later. The Commission should be consistent; we could come up with wording in a few weeks. This condition could read “no synthetic pesticides herbicides or fertilized may be used in maintaining the landscaping”; so the prohibition doesn’t apply to wasps or other household pests.
- **Jim Athearn** asked Commissioners to indicate whether they preferred a wording that prohibited the use of synthetic pesticides and fertilizers or a wording that recommended using organic fertilizers. By a vote of 7 to 3, the Commissioners indicated that they preferred to prohibit the use of synthetic pesticides and fertilizers.

*John Best moved and it was duly seconded to approve the project with the following conditions:*

- The following landscape conditions shall be incorporated in the landscape plan:
  - The natural buffer of pine trees and other vegetation between the house and the project site as well as on the two sides of the site facing abutters shall be preserved to the greatest extent possible and disturbed areas are to be replanted with dense native shrubs and trees of the same species that are there now, in order to re-establish the buffer.
  - Disturbed lawn areas shall be replanted with low-maintenance grass seed varieties such as Cape Cod Mix or creeping red fescue.
  - There shall be a chain link or split rail fence (with or without wire) surrounding the rear and right side of the property, of height no greater than four feet. The fence shall be set back a minimum of 3’-4’ from the property line. If the applicant desires, the fence may have a gate allowing access to the Oak Bluffs School property (which the Commission encourages in order to allow interaction between students and residents of the project and to facilitate to the recreational facilities on the school property).
  - The applicant shall add shade trees to the parking lot design.
  - The access road may be paved to a width of not more than 22’. The access road shall include a 4’ width for a pedestrian walkway separated from the driveway, with a raised bituminous berm.
  - No synthetic herbicides, pesticides, fungicides or quick-release chemical fertilizers shall be used in maintaining the landscaping.

A landscaping plan for the site, incorporating these conditions, shall be submitted for the approval of the LUPC Landscape Review Subcommittee before construction.

- In order to adequately accommodate the Island’s elderly population:



- All common rooms shall be air-conditioned, to compensate for the limited cross ventilation, and all living units shall be designed to accommodate air-conditioning units.
- The bathroom and kitchen in the handicap unit are to be equipped with infrared heat-sensitive faucets.
- The front building entry doors and the exterior door to the handicap unit shall be remote button-activated.

*Roll call vote. In favor: J. Athearn, J. Best, C. Brown, L. DeWitt, J. Greene, T. Israel, M. Ottens-Sargent, A. Schweikert, L. Sibley, P. Strauss, R. Toole. There were no votes in opposition or abstentions.*

#### **4. JENNEY LANE (DRI No. 573) – DISCUSSION OF REOPENING THE PUBLIC HEARING**

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Christina Brown recused herself from this discussion and left the meeting room.

Jim Athearn noted that the Commission had received a citizens' petition asking for the reopening of the Public Hearing on the Jenney Lane affordable housing development in Edgartown that the Commission had closed at its last meeting, August 21.

Linda DeWitt said that she had discussed the project with the Edgartown selectmen and that they were unaware of some of the issues. She said that the selectmen recommended reopening the Public Hearing. She noted that some changes to the proposal were made by the Applicant 15 minutes before the end of the hearing.

*Jane A. Greene moved and it was duly seconded to reopen the Public Hearing on the Jenney Lane project.*

- Linda Sibley said that she understands that the hearing can be reopened, but that doesn't extend the clock. It has already been two weeks and it would take 3 weeks to advertise. She suggested honoring the request, although there might be a logistical problem with the timetable. The applicant might be sensitive to this request and agree to an extension.
- Richard Toole, who had been the Hearing Officer of the hearing in question, said that if people feel they need an opportunity to further discuss, it should be given.
- Jennifer Rand said it could be scheduled for October 2.

*Voice vote. In favor: 14. Opposed: 0. Abstentions: 0. The motion passed unanimously.*

#### **5. TRANSPORTATION DOCUMENTS**

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Mark London explained that the Commission staff had prepared the Regional Transportation Plan, the Transportation Improvement Program and the Unified Planning Work Program, in cooperation with the Joint Transportation Committee (JTC) and a number of other public participation activities. At its September 2, 2003 meeting, the JTC unanimously passed a motion recommending that the Committee of Signatories, including the Martha's Vineyard Commission, endorse the three documents.

*Tristan Israel moved and it was duly seconded to endorse the Regional Transportation Plan, the Transportation Improvement Program and the Unified Planning Work Program.*

- Tristan Israel commented that he thinks the MVC should take a planning lead on the Lagoon Bridge project to coordinate public input.

- **Bob Schwartz** asked whether it was too late to change the document. Mark London said that it would be very difficult to make changes at this stage.
- **Christina Brown** said it is a remarkable plan. It is the first time that there is an overall inventory and analysis of all the transportation issues on the Island.
- **Linda DeWitt** said that Dr. Hershberg, an Emergency Room physician and coordinator of emergency response at the Hospital, said that the report was excellent.

*Voice vote. In favor: 13. Opposed: 0. Abstentions: 2. The motion carried.*

**Tristan Israel** commended the staff and especially the Executive Director for the process followed in preparing the plan.

## 6. UPCOMING LUPC MEETINGS AND SITE VISITS

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- September 9 – LUPC meeting cancelled.
- September 15 – LUPC meeting dealing with modifications to three previous DRIs
- The commissioners received an invitation to the opening of the Mansion House on September 7.

## 7. APPROVAL OF MEETING MINUTES

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*Tristan Israel moved and it was duly seconded to approve the minutes of August 7*

- Doug Sederholm noted that, on page 5 line 15, he had said “asked whether the applicant considered the possibility of making the intersections two-way stops as traffic mitigation”.
- Linda Sibley said that on page 6, lines 9 and 10, she had said “and that the correspondence suggested that the Jenneys’ driveway be used ”

*Voice vote: In favor: 12. Opposed: 0. Abstentions: 3. The motion carried.*

The Meeting was adjourned at 9:58 p.m.

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Chairman

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Date

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Clerk-Treasurer

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Date